

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4279 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARBHANBHAI RAMBHAI PADHIYAR & ORS.

Versus

ITUBHAI BECHARSANG & ORS.

Appearance:

MRS KETTY A MEHTA for Petitioners

MR NN PANDYA for Respondent No.2

None present for Respondent No.1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/07/96

ORAL JUDGMENT

Heard learned counsel for the parties. Challenge has been made by the petitioners in this Special Civil

Application to the order of Special Secretary and Urban Land Tribunal dated 14th July 1982, and further prayer has been made that the Revenue Authority be directed to keep Entry No.577 on record of the Revenue Department as legal and valid entry.

2. The facts of the case, in brief, are as under:

Shri Becharsang Amarsang was the original land holder of agricultural land bearing Survey No.197 of village Jaska, Taluka Dhandhuka of District Ahmedabad. The said agricultural land was cultivated by the tenant who was held to be a purchaser of the said land by the order of Mamlatdar, Agricultural Lands Tribunal. The tenant was a permanent tenant and as such, the land was held to be old tenure land. The present petitioner No.1 purchased the holdings by a registered Sale Deed dated 14th September 1973 from the permanent tenants. Necessary entry in village Register No.6 was made accordingly. A reference may be made to the Entry No.577 made by the Mamlatdar wherein this land was held to be old tenure land. The Entry regarding name of the petitioners in the relevant Revenue record is No.628. The Entry No.577 has been made on 9.6.73. The respondent No.1, son of Shri Becharsang filed an appeal on 28th June 1977 challenging Entry No.577. The said appeal was allowed and the Assistant Collector, under its order dated 2nd January 1978 held that the holding was new tenure and Entry No.577 was ordered to be cancelled. Against the said order of the Assistant Collector, the petitioners preferred an appeal to the Collector, Ahmedabad. The Collector, Ahmedabad, vide its order dated 30th April 1979 dismissed the said appeal. The matter was further taken by the applicants by preferring Revision Application to the State Government, which has also been dismissed under the order dated 14th July 1982. Hence this writ petition before this Court by the petitioners. None of the respondents have filed any reply to this Special Civil Application and as such, the averments made therein stands uncontroverted.

3. Smt. Ketty A. Mehta, learned counsel for the petitioners raised several contentions, but I do not consider it necessary to advert to all these contentions except one, which according to me is sufficient to allow this Special Civil Application.

4. Smt. Mehta contended that the father of the respondent No.1 accepted the sale of agricultural holding made by the petitioners No.2 and 3 in favour of petitioner No.1, and as such respondent No.1 is estopped

from making any challenge to the Entry No.628 made in favour of petitioner No.1. In view of these facts, the respondent No.1 had no right or locus standi to challenge the Entry No.577, much less after five years from the date on which it has been made. The petitioners No.1 and 2 were held to be permanent tenants and that order too has not been challenged by respondent No.1. Earlier also, the Agricultural Land Tribunal vide its order dated 30th March 1972 in case No.168 of 1971, held that the bar of Section 43(1) of the Bombay Tenancy and Agricultural Lands Act was not applicable as the land is of old tenure land. Accordingly Entry No.577 was entered in the Revenue record in respect of this tenant.

5. I find sufficient substance in the contention raised by the learned counsel for the petitioners. The respondent No.1, at any point of time, has not challenged the status of the petitioners No.2 to 3 as permanent tenants as well as the Sale Deed made by those petitioners in favour of petitioner No.1. The Sale Deed has been executed in the year 1973. The Entry No.577 has also been entered into Revenue record as per the Agricultural Lands Tribunal's order dated 30th March 1972 and challenge to that order after such a delay coupled with the fact that there is no challenge to Entry No.628, give no locus standi to the respondent No.1 whatsoever to file an appeal challenging Entry No.577 without challenging the other aspects. Moreover, the petitioners No. 2 and 3 became owners of the said land by virtue of confirmation of that status under the provisions of Section 32 of the Bombay Tenancy and Agricultural Lands Act. The respondent No.1 has left with no right, title and interest whatsoever in the said agricultural holding. Even his father was ceased to have any right, title and interest in the said holding, what to say of respondent No.1. When the respondent No.1 has no right, title and interest whatsoever left in the said agricultural holding, the authorities below have committed a serious illegality in entertaining appeal of respondent No.1 and declare Entry No.577 to be illegal. This aspect of the matter has altogether not been considered in the proper perspective.

In the result, this Special Civil Application is allowed the the order of Special Secretary and Urban Land Tribunal dated 14th July 1982 passed in U.L.T./R.T.S./No.124 of 1979, is quashed and set aside and Entry No.577 is ordered to be maintained as such. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)